

Proper Handling of Customers' Personal Data by Estate Agents

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In Hong Kong, the privacy right of individuals in relation to the personal data is protected by the Personal Data (Privacy) Ordinance (“the Ordinance”).

As an estate agent, you have to handle individual customers’ personal data, e.g. name, telephone number, address, identity card number, information of individual customers contained in the provisional agreement for sale and purchase, tenancy agreement, etc. in carrying out estate agency work. The collection, storage, use and handling of such personal data shall comply with the Ordinance.

Respecting customers’ privacy and winning their trust are beneficial to the building of goodwill, which will certainly help business in the long run.



What are Personal Data?

Personal data are any data relating to a living individual from which his/her identity can be directly or indirectly ascertained, including expression of opinion; and the data shall be recorded in a form that can be processed or accessed.



The Six Data Protection Principles and the requirements regulating **the use of personal data in direct marketing in the Ordinance** are of direct relevance to your work:

The Six Data Protection Principles

Principle 1 – purpose and manner of collection of personal data

Collection of personal data shall be related to a function or activity of the data user and is necessary for the purpose of the collection; the data collected are not excessive; the means of collection are lawful and fair; data subjects are informed of the purpose of collection and the classes of persons to whom the data may be transferred.

Example:

When you collect customers' personal data, you should provide customers with a Personal Information Collection Statement, clearly stating the purpose of collecting the data, the classes of persons to whom the data may be transferred, the consequences of failing to supply the data and the right of access to the data. The Statement can be attached to documents such as estate agency agreements.



Principle 2 – accuracy and duration of retention of personal data

All practicable steps shall be taken to ensure the accuracy of the personal data, and the data shall be erased after the fulfillment of the purposes for which the data are used.

Example:

Policy should be formulated to specify the period of retention of customers' personal data. In devising its policy, regard shall be given to any statutory requirements and applicable Practice Circulars, e.g. practitioners are required under section 12(2) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation to retain copy of the receipt for moneys received for not less than 3 years after its issue.





Principle 3 – use of personal data

Unless the data subject gives “prescribed consent”, personal data should not be used for any purposes other than the purpose for which they were collected or such directly related purpose. “Prescribed consent” means the express consent of a data subject given voluntarily.

Example:

Under general circumstances, practitioners are not allowed to disclose customers’ personal data to another estate agency, or use individual customers’ data for private purposes.



Principle 4 – security of personal data

All practicable steps shall be taken to ensure that personal data are protected against unauthorized or accidental access, processing or erasure.

Example:

Documents containing personal data such as estate agency agreements should be kept securely to avoid being seen by irrelevant parties. Personal data stored in electronic form should be carefully guarded with appropriate IT security measures.



Principle 5 – information to be generally available

Policies and practices in relation to personal data should be formulated and made available.

Example:

You should provide your customers with a Privacy Policy Statement, stating the kinds of personal data held, main purposes of using the personal data and the practices in place. The policy can be displayed on your company’s website.



Principle 6 – access to personal data

Data subjects have the rights of access to and correction of their personal data; and data users shall comply with a data access request not later than 40 days after receiving the request.

Example:

A customer has the right to make a request to be informed by an estate agency whether it holds his/her personal data, such as the estate agency agreement entered into by him, and be supplied with a copy of such data.

Section 34 of the Ordinance – Direct Marketing

When the estate agency uses a customer's personal data for the first time for the purpose of direct marketing, it must inform the customer that he/she may request it to cease to so use the data, i.e. to provide an "opt-out" choice to the customer.

If the customer exercises his/her opt-out choice, the estate agency must cease to so use the data.

Steps of Making Marketing Calls by Practitioners:



Before the call

Check the opt-out list to ensure that the telephone number is not on the list.



During the call

Give the company's name and practitioner's name.

Inform the receiver of the opt-out choice by saying, "If you do not wish to have further marketing calls from us, please tell me and we will not call again."



After the call

If the receiver does not wish to receive further marketing calls, you should note down the request and update the opt-out list. The estate agency is not allowed to charge the receiver for such arrangement.

Notes:



Opt-out List

- Estate agencies should maintain a list of all individuals who have said that they do not wish to receive further marketing calls.
- The list should be distributed by the most practical and efficient way, e.g. via computer network, to all the staff members who undertake direct marketing activities.
- The list should be updated regularly and timely to ensure compliance with the opt-out requests.
- A list for the whole company (not just individual branch) should be prepared.
- Estate agencies should formulate procedures and guidelines on the undertaking of direct marketing activities by their staff.



Case Study:



The Complaint

A property owner complained to the Office of the Privacy Commissioner for Personal Data (the “PCPD”) that, notwithstanding her repeated objections, staff of an estate agency had been approaching her through her home and mobile telephone numbers in an effort to persuade her to sell her property through the agency. She had also written to request the agency not to contact her in future, but the request was ignored.



Privacy Commissioner’s Decision

It was determined that the agency acting through its staff had contravened section 34. It was also found that the agency did not, at the material time, have an adequate policy or practice in force to comply with the requirements of the said section.

Upon warning, the estate agency undertook to strengthen the training of the staff and to revise its procedural guidelines in accordance with the requirements of the law.

(Note: Contravention of section 34 is a criminal offence and is liable to be prosecuted.)

Practical Tips

(I) Identity Card Number and Copy



Note:

- 1 In general, no data user may compulsorily require an individual to furnish his identity card number or copy, unless authorized by law (e.g. collecting a copy of the vendor's identity card under section 13(3) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation) or it is permitted under the Code of Practice on the Identity Card Number and other Personal Identifiers issued by the PCPD.
- 2 When collecting customers' identity card copies, the word "Copy" should be stamped on the photocopy in the presence of the customer. The word needs to be stamped on the image of the identity card.
- 3 In their work, practitioners may need to collect customers' identity card number, e.g. for completion of estate agency agreements. To ensure the accuracy of customers' identity card number, practitioners can request customers to present their identity cards for verification.
- 4 When practitioners lead customers to flat viewing, security guards of the building may request the recording of the identity card numbers of visitors unaccompanied by the owner. Under the circumstances, practitioners can propose other alternatives for identification, e.g. staff cards issued by their companies.

Case Study:



The Enquiry

If a landlord requests to photocopy a tenant's identity card during the process of negotiating a tenancy agreement, how should a practitioner handle it?



Privacy Commissioner's View

To facilitate smooth negotiation of a tenancy agreement, practitioners may encourage landlords and tenants to provide information to strengthen mutual trust. For example, if it is a mortgaged property, landlords may be asked to provide the bank's consent to lease. On the other hand, tenants may be asked to provide their occupation data if they agree. However, landlords should not collect tenants' identity card copies.

(II) Accuracy of Customers' Personal Data



Note:

Regular customers may sometimes refer new customers to practitioners. When dealing with new customers, practitioners should follow the normal procedure of registering the personal data of the new customers and ensure the accuracy of the data.



Case Study:



The Complaint

An estate agency practitioner was referred a customer (the referee was a relative of the customer). Upon completion of a property transaction, the practitioner sent the commission note to the address of the referee expecting that the referee would pass the note to the customer. However, the customer was dissatisfied with such act. In this case, the practitioner had not made any express agreement with the customer on the use of his relative's (i.e. the referee's) residential address for communication.



Privacy Commissioner's View

Estate agency practitioners should accurately collect and record customers' addresses for communication and should not, for the sake of convenience, use referees' addresses for communication with the customers.

(III) Transfer of Customers' Personal Data



Notes:

Practitioners may introduce other services related to property transactions, e.g. legal or mortgage services to customers. Practitioners must obtain customers' express and voluntary consent before transferring their personal data to legal firms or banks.



Case Study:



The Complaint

A customer rented a flat through the service of a property agency. The agency transferred his data to a club operated by its subsidiary for provision of other services. The club sent a letter to the customer notifying him that unless he objects, he would automatically become a member of the club. The customer did not raise any objection. The club later engaged in a joint marketing scheme with an insurance company and passed the customer's name, contact details and identity card number to the insurance company. The insurance company then called the customer to promote its life insurance products. The customer complained about improper use of his personal data by the agency.



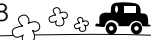
Privacy Commissioner's Decision

It was clear that the original collection purpose of the customer's data was for the provision of property-agency service for renting a flat. Joining the club could not be said to be related to the original collection purpose for renting a flat, in particular when the club would disclose members' data to third parties for promotion of products unrelated to the property transaction.

The customer's failure to object to the notice of the property agency could not amount to "prescribed consent" for using his data to make him a member of the club.

Accordingly, the transfer of the customer's data to the club by the property agency for making him a member and the subsequent disclosure to the insurance company by the club for marketing life insurance products were found to be in contravention of Data Protection Principle 3.

Consequently, the agency and the club ceased such uses of customers' data after the issuance of enforcement notices to them.



(IV) Security of Personal Data



Notes:

- 1 Practitioners very often take documents or agreements containing customers' personal data away from office for carrying out estate agency work. Practitioners should safeguard the data from losing or unauthorized access by third parties.
- 2 If mobile electronic storage device (e.g. laptop computer, USB flash drive) is used, practitioners must ensure only necessary data are stored, data must be encrypted and deleted after use.
- 3 Do not dispose of documents containing personal data recklessly. Paper shredders can be used for destroying those documents. If personal data stored in computers will not be used anymore, the data should be thoroughly erased. Where personal data are stored electronically, practitioner should ensure that there is no share file software, such as foxy, being installed in the computer which may increase security risks.
- 4 Only authorized staff who have actual needs are allowed to access personal data stored in paper files or in computers.
- 5 Terms should be set in the service agreements of information technology service providers to ensure computer system security and data confidentiality.

(V) Collection of Commission in Arrears



Notes:

- 1 If an estate agency will engage a debt collection company to collect commission in arrears from customers in case the customers are in breach of contract, it should inform the customers of such arrangement when their personal data are collected.
- 2 Before transferring the personal data of customers who are in breach of contract to a debt collection company, the estate agency should make sure that the data are accurate and should provide only the necessary data, e.g. contact information of the customer and the amount to be collected. No identity card copy of the customer should be sent to the debt collection company.